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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN PEARL SMITH, II,

Defendant.

No. 3:16-cr- 00086-SLG-DMS

MOTION TO DISMISS COUNTS 1,9,13  
BECAUSE THE ROBBERIES DID NOT  
AFFECT INTERSTATE COMMERCE

**I. MOTION**

Motion to dismiss counts 1, 9, and 13 because the charged robberies did not affect interstate commerce. Smith makes this motion under the Commerce Clause, Article 1, Section 8, Clause 3, and the Fifth Sixth and Eighth Amendments to the United States Constitution.

**II. FACTS RELATED TO THE MOTION**

In Counts 1, 9 and 13, Smith is charged with three separate Hobbs Act robberies. All three robberies occurred within that State of Alaska and the discovery provided by the Government makes it clear that none had any direct relation to interstate commerce.

MOTION TO DISMISS COUNTS 1, 9,&13-  
COMMERCE CLAUSE - 1

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### III . ARGUMENT

In *Taylor v. United States*, 136 S. Ct. 2074, 2080, 195 L. Ed. 2d 456 (2016), a seven-member majority of the Court upheld the appellant's conviction under the Hobbs Act for “commit[ting] a robbery that targets a marijuana dealer's drugs or drug proceeds.” The Court noted that in *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005), it held the Commerce Clause gives Congress authority to regulate the national market for marijuana, including the authority to proscribe the purely intrastate production, possession, and sale of this controlled substance. That Court reasoned that because Congress may regulate these intrastate activities based on their aggregate effect on interstate commerce, it follows that Congress may also regulate intrastate drug theft.

As for a Hobbs Act robbery in *Taylor*, the Court said:

The case now before us requires no more than that we graft our holding in *Raich* onto the commerce element of the Hobbs Act. The Hobbs Act criminalizes robberies affecting “commerce over which the United States has jurisdiction.” § 1951(b)(3). Under *Raich*, the market for marijuana, including its intrastate aspects, is “commerce over which the United States has jurisdiction.” It therefore follows as a simple matter of logic that a robber who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction.

*Taylor* at 2080.

This case demonstrates why this Court should reject the majority opinion in *Taylor* and adopt the dissenting opinion. The defense understands that this Court is bound by controlling United States Supreme Court precedent but makes this argument in order to preserve this issue on review.

1 That is because Justice Thomas dissented calling *Taylor's* holding a further  
2 extension of “expansive, flawed commerce-power precedents,” and warned of the  
3 “dangerous step” towards allowing “Congress [to] accumulate the general police power  
4 that the Constitution withholds.” *Taylor* at 2082, 195 L. Ed. 2d 456 (2016). First, he  
5 argued that it must be both necessary and proper in order to regulate interstate commerce.  
6 Second, he contended that a local robbery bears no direct relation to interstate commerce.  
7 Finally, he recognized that the majority's decision allows for Congress to usurp states'  
8 general police powers.  
9

10 As Justice Thomas points out, “robbery is not commerce” because it does involve  
11 buying or selling goods. There is no evidence of that kind of commercial activity in the  
12 robberies charged in this case. This was a purely intra-State crime. The alleged robberies  
13 here do not bear a “direct relation” to the regulation of interstate commerce at all. *Taylor*,  
14 at 2084. And, as argued in Smith’s Motion to dismiss under the 10<sup>th</sup> Amendment, the  
15 prosecutor’s decision to bring these charges in federal court usurps the State of Alaska’s  
16 general police powers.

17 Finally, even if this Court does not dismiss these counts, it should later instruct the  
18 jury that the Government “must prove, beyond a reasonable doubt, that the defendant's  
19 robbery itself affected interstate commerce.” *Taylor* at 2085 (Thomas, J. dissenting).  
20

#### 21 IV. CONCLUSION

22 Justice Thomas called *Taylor* a “dangerous” step. *Id.* at 2089. Like Justice  
23 Thomas, this Court should find that *Taylor* construes the Hobbs Act in a way that  
24 conflicts with the Constitution, with Alaska precedent, and with longstanding protections  
25 for the accused. Smith asks this Court to dismiss Counts 1, 9 and 13.

1 DATED this 16<sup>th</sup> day of January 2019.

2 /s/Suzanne Lee Elliott

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10 /s/ Mark Larranaga

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13 **CERTIFICATE OF SERVICE**

14  
15 I, SUZANNE LEE ELLIOTT, certify that on January 16<sup>th</sup> 2019, filed the foregoing  
16 document with the United States District Court's Electronic Case Filing (CM/ECF)  
17 system, which will serve one copy by email on Assistant United States Attorneys FRANK  
18 V. RUSSO, WILLIAM A. TAYLOR, JAMES NELSON AND KAREN VANDERGAW.

19 /s/ Suzanne Lee Elliott

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24  
25 MOTION TO DISMISS COUNTS 1, 9,&13-  
COMMERCE CLAUSE - 4

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U.S. V. SMITH NO. 3:16-CR-0086-SLG-DMS

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